

**Bureau of Land Management  
Winnemucca District Office  
HRFO (W010)**

**Categorical Exclusion**

**CX#: DOI-BLM-NV-W0-010-2013- 0053-CX**

**Date: 3/5/2013**

Lease / Case File / Serial #: N-89149

Regulatory Authority (CFR or Law): CFR 2800

BLM Manual: 2800

Subject Function Code: 2800

Is the project located within a Preliminary Priority Habitat? ☒ Yes ☐ No

Is the project located within a Preliminary General Priority Habitat? ☐ Yes ☒ No

Is the project located within a National Landscape Conservation System feature (NCA, Wilderness, WSA, ISA, Scenic or Historic Trails)? ☐ Yes ☒ No

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1. BLM District Office: Winnemucca District Office

2. Name of Project Lead: Debbie Dunham

3. Project Title: Lyman Youngberg N-89149

4. Applicant: Lyman Youngberg

5. Project Description: (briefly describe who, what, when, where, why, how)

Mr. Youngberg would like to place an above ground poly pipeline , 10 – 12” diameter, and 30 – 90 feet long, to divert water on Pole Creek in the Montana Mountains, to an existing ditch in order to irrigate pasture lands (deeded land). The pipeline will have a filter screen on the intake. No digging or construction would take place. The current condition of the existing ditch would not be modified.

Mr. Youngberg has a pending water permit with the State of Nevada, application No. 79743, for January 1 – December 31, yearly, with a listed use of irrigation. This requested temporary ROW (3-5 years) would allow him to meet the beneficial use requirement of the Nevada State statutes.

The ROW term of use would coincide with the growing season and availability of water, approximately March 1 – Sept 30 of each year. The pipeline would remain in Pole Creek while the available water supply lasts, after which the pipe would be removed.

Access would be via an existing (1910) road, which parallels Pole Creek.

Pipeline dimensions (length, width, height, depth): 30-90 feet long; 10 -12 inches diameter.

Total Acres: 0.02

BLM Acres: 0.02

Will the project result in new surface disturbance? ☐ Yes ☒ No

Has the project area been previously disturbed? ☐ Yes ☒ No ☐ N/A

If yes, what percent of the project area has been disturbed? 0%. If only part of the project area has been disturbed, indicate disturbed area on map. Describe disturbance (and attach photo of disturbed area if you have one):

6. Legal Description: T.44 N., R. 35 E., sec. 2, lots 2-3;  
SWNE; SENE;

T.45 N., R. 35 E., sec. 35, SW.

USGS 24k Quad name: Thacker Pass & Sentinel Rock

100k map name: Denio and Quinn River

Land Status: ☒ BLM ☐ Private ☐ Other\_\_\_\_\_.

### **Part I: Plan Conformance Review**

The Proposed Action is subject to the:

- ☒ Paradise-Denio Management Framework Plan
- ☐ Sonoma-Gerlach Management Framework Plan
- ☐ Black Rock Desert-High Rock Canyon Emigrant Trails NCA and Associated Wilderness and Other Contiguous Lands in Nevada RMP

The proposed action is in conformance with the applicable Land Use Plan (LUP), even though it is not specifically provided for, because it is clearly consistent with the following LUP decisions(s) (objectives, terms, and conditions):

There is no specific objective for rights-of-way in the Paradise-Denio Management Framework Plan. In accordance with FLPMA Title V Sec. 501, BLM is authorized to grant rights-of-way for “(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water”.

### **Part II: NEPA Review**

Categorical Exclusion Review: This Proposed Action qualifies as a categorical exclusion under:

- ☒ 516 DM 11.9, (BLM) E (18) Temporary placement of a pipeline above ground.

**ESA and BLM Sensitive Status Species**

<b>Evaluation Criteria</b>	<b>Yes</b>	<b>No</b>
1. Are species listed under the Endangered Species Act likely to occur in the project area? If yes, list the species in Table 1 below. Verify with USFWS or use approved list.	X	<input type="checkbox"/>
2. Are BLM NV Sensitive Species, based upon the current IM, likely to occur in the project area? If yes, list the species in the Table 1 below.	x	<input type="checkbox"/>
3. Could the proposed action result in “take” under the Migratory Bird Treaty Act? If yes, attach appropriate mitigation measures.	x	<input type="checkbox"/>

**Table 1. Special Status Species that may occur in the project area:**

<b>ESA</b>	<b>BLM</b>	<b>Common (Scientific) Name</b>	<b>May Be Affected?</b>	<b>Mitigation for BLM Sensitive Species (The following stipulation(s) is/are recommended to be applied to the authorization) (Attach ESA Section 7 Compliance to Form, if applicable)</b>
X	<input type="checkbox"/>	Lahontan cutthroat trout ( <i>Oncorhynchus clarkii henshawi</i> )	<input type="checkbox"/> Yes X No	Lahontan cutthroat trout are approx. 2.5 miles upstream from the use area. USFWS have been consulted (by phone) and they are fine with the proposed action as long as it includes the filter screen on the intake.
x	x	Greater Sage-Grouse	x Yes <input type="checkbox"/> No	Project falls within Preliminary Priority Habitat (PPH) for Greater Sage Grouse. Avoid activities that may disturb or displace Greater Sage Grouse during March 1 <sup>st</sup> – May 15th before 10am or after 4 pm.
<input type="checkbox"/>	x	Pygmy Rabbit	<input type="checkbox"/> Yes X No	The project does not propose any surface disturbance; no potential effects anticipated for Pygmy Rabbit.
<input type="checkbox"/>	x	Bighorn Sheep	x Yes <input type="checkbox"/> No	The proposed project falls within potential lambing range for Bighorn sheep. Please try to avoid activities that may disturb and displace wildlife during April 1 through June 30.
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Table 2. Migratory Bird Treaty Act Consideration**

Potential MBTA Species w/in the Project Area Common ( <i>Scientific</i> ) Name	May Be Affected?	Recommended Mitigation (The following stipulation(s) is/are recommended to be applied to the authorization)
<p>black-throated sparrow (<i>Amphispiza bilineata</i>), Brewer's blackbird (<i>Euphagus cyanocephalus</i>), Brewer's sparrow (<i>Spizella breweri</i>), canyon wren (<i>Catherpes mexicanus</i>), gray flycatcher (<i>Empidonax wrightii</i>), green-tailed towhee (<i>Pipilo chlorurus</i>), rock wren (<i>Salpinctes obsoletus</i>), sage sparrow (<i>Amphispiza belli</i>), sage thrasher (<i>Oreoscoptes montanus</i>), western meadowlark (<i>Sturnella neglecta</i>), vesper sparrow (<i>Pooecetes gramineus</i>)</p> <p>MacGillivray's warbler (<i>Oporornis tolmiei</i>), Wilson's warbler (<i>Wilsonia pusilla</i>), warbling vireo (<i>Vireo gilvus</i>), Lewis' woodpecker (<i>Melanerpes lewis</i>), red-naped sapsucker (<i>Sphyrapicus nuchalis</i>), Virginia's warbler (<i>Vermivora virginiae</i>), calliope hummingbird (<i>Stellula calliope</i>), broad-tailed hummingbird (<i>Selasphorus platycercus</i>), orange-crowned warbler (<i>Vermivora celata</i>), Cooper's hawk (<i>Accipiter cooperii</i>), northern goshawk (<i>Accipiter gentilis</i>), fox sparrow (<i>Passerella iliaca</i>), song sparrow (<i>Melospiza melodia</i>), dark-eyed junco (<i>Junco hyemalis</i>), Lincoln's sparrow (<i>Melospiza lincolnii</i>), willow flycatcher (<i>Empidonax traillii</i>), dusky flycatcher</p>	<p>x Yes <input type="checkbox"/> No</p>	<p>In order to avoid potential impacts to breeding migratory birds, a careful visual inspection of habitat in the project area should be made prior to any surface disturbance (including cross-country routes) during the avian breeding season (March 1<sup>st</sup> through August 31<sup>st</sup>). Nesting activities may include eggs or young present in nest, adult behavioral displays (e.g. dive-bombing, faking injury, won't leave the area, agitated calling, etc.). If active nests are located, the BLM biologist must be notified immediately and appropriate protection measures which may include avoidance or restriction of activities will be established.</p> <p>Migratory Bird's nests shall not be removed for the placement of the pipeline.</p>

( <i>Empidonax oberholseri</i> ), brown-headed cowbird ( <i>Molothrus ater</i> ), American robin ( <i>Turdus migratorius</i> ), house finch ( <i>Carpodacus mexicanus</i> ), and Cassin's finch ( <i>Carpodacus cassinii</i> )		
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

*Mitigation Measures/Remarks (The following stipulation(s) is/are recommended to be applied to the authorization):*

The Proposed Action has been reviewed to determine if any exceptions described in 43 CFR 46.215 Categorical Exclusions: Extraordinary Circumstances apply. (See attached page)

Part III: DECISION:

I have reviewed this plan conformance and NEPA compliance record and have determined that the proposed project is in conformance with the approved land use plan and that no other environmental analysis is required.

☒ Project authorization is subject to mitigation measures identified above. (This is a NEPA Decision. A separate program implementation decision is necessary.)

☐ Based on regulatory authority or law that allows BLM to take action, it is my decision to allow for implementation of the project, as described, with the mitigation measures identified above and attached as stipulations, conditions of approval, terms of conditions, etc. This is a combined NEPA and program implementation decision.

Provide text of regulatory authority being used to allow BLM to take action.

Authorized Official \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Administrative Review or Appeal Opportunities

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Derek Messmer, Field Manager, Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).